

No. 21-6858

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
DEC 07 2021
OFFICE OF THE CLERK
SUPREME COURT U.S.

ORIGINAL

Dalton L. Smith — PETITIONER
(Your Name)

vs.

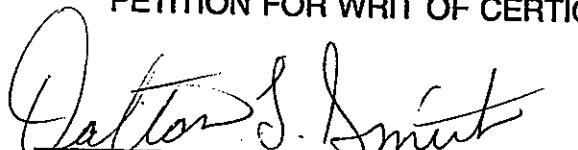
United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI


(Your Name) DALTON L. SMITH

USP ATLANTA, PO BOX 150160

(Address)

ATLANTA, GA, 30315

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

1. In light of the Court & Government concessions(twice) that the petitioner never served over a year,should the ACCA,851 and Career Offender enhancement be removed in wake of the First Step Act Sec 401 and First Step Implementation Act?
2. In light of the Rehaif/Greer/Gary trio, and the governments concessions,can the 922(g) conviction stand or should it be Vacated?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

US v Smith 20-7656 (4th Cir. 2021)
US v Smith 3:15-cv-04225-JFA (D.S.C 2019)
US v Smith 18-7409 (4th Cir.2019)
US v Smith 3:13-cr-01038-JFA-1 (D.S.C 2013)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-8
REASONS FOR GRANTING THE WRIT	9-11
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A - Fourth Circuit of Appeal Denial
(US v Smith 20-7656, 4th Cir. Sept 14, 2021)

APPENDIX B - District Court Denial- Rehaif
(US v Smith 3:15-cv-04225, D.S.C 2020)

APPENDIX C - Fourth Circuit Appeal Denial
(US v Smith 18-7409 (4th Cir. May. 20, 2019))

APPENDIX D - District Court Denial-Johnson Claims
(US v Smith 3:13-1038-JFA D.S.C 2018)

APPENDIX E- First Step Act Changes

APPENDIX F- State Records

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Boman v US 196 Led 2d 6 (2016).....	6
Greer v US 210 Led 2d 121 (2021).....	10
Johnson v US 135 S.Ct 2551 (2015).....	Passim
Rehaif v US 204 Led 2d 594 (2019).....	Passim
US v Richardson 2019 US Lexis 4169 (Sp. Ct 2019).....	9
US v Smith 20-7656 (4th Cir. 2021).....	Passim
US v Smith 18-7409 (4th Cir. 2019).....	Passim
US v Smith 3:15-cv-04225-JFA (2018).....	Passim
US v Smith 3:13-cr-01038-JFA-1 (D.S.C 2013).....	Passim

STATUTES AND RULES

21 USC § 851.....	Passim
21 USC § 841.....	Passim
18 USC § 922(g).....	Passim
18 USC § 924(c).....	Passim
18 USC § 924(e).....	Passim
U.S.S.G § 4b1.1.....	Passim
U.S.S.G § 4b1.2(b).....	Passim

OTHER

First Step Act § 401.....	Passim
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at US v Smith 20-7656 (4th Cir. 2021); or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at US v Smith. 3: 15-cv-04225-JFA; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**: NA

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ appears at Appendix _____ to the petition and is _____ court

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 9/14/21

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**: NA

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause and Equal Protection Clauses of Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury except in cases arising in the land or naval forces, or in the Miltia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in danger; nor shall any person be subject to be twice put in jeopardy of life or limb; nor shall be compelled in any case to be a witness against himself, nor be deprived of life or property, without due process of law, nor shall private property be taken for public use without just compensation.

STATEMENT OF THE CASE

On 12/3/13, the petitioner, Dalton L. Smith, was indicted in the District of South Carolina on 12 cts...of drug and gun violations as stated below:

Cts-1,4,7,10 Possession with intent to distribute a quantity of cocaine. (21 USC § 841(b)(1)(c))

Cts-2,5,8,11 Felon in possession of the exact same firearm and ammo. (18 USC 922(g)and 924(e))

Cts-3,6,9,12 Possession of the same firearm in futherance of drug trafficking (18 USC 924(c))

On 3/5/14, the government filed a 851(Doc 43) then a 2nd 851 with the ACCA as well .(Doc 50)

Mr. Smith entered into a guilty plea to counts 5(922(g)) and count 6(924(c)).

The government, Probation Office(PSR) and Court all relied upon 6-10 drug offenses to apply the 851, 4bl.1 and ACCA, in "which Mr. Smith [only served 3 days total on all 10 convictions]". (See App'x B & D , Doc 116 ..the government filed an information pursuant to 21 USC 851, notifying Smith that he would be subject to increased penalties as provided by 21 USC 841(a)(1) based upon 6 prior felony drug convictions..[...]A presentence report was prepared and determined Smith was an ACCA,18 UCS 924(e) and 4bl.4(c)(2) and that Smith was a Career Offender based upon a conviction under 18 USC 924(c) and 4bl.1(c)(2))

STATEMENT OF THE CASE CONTINUED

The [PSR] made the ACCA and Career Offender findings based upon PSR-65 PWISD Marijuana within proximity of a school zone

PSR-68 Distribution of Cocaine within proximity of school zone

-68 PWISD Cocaine within proximity of a school zone

PSR-74 PWISD cocaine (1st offense)

All offenses were in the State of South Carolina (See App'x F)

Mr. Smith's statutory penalties for the drug offenses were increased based upon the from 0-20 yrs to 0-30 yrs. Mr. Smith's 922(g) offense maximum increased from 0-10 yrs to 15 yrs to life. Mr. Smith's 924(c) guideline range was increased under the career offender finding to 262-327 because of the 851 statutory increase and career/ACCA finding as well. (App'x B Doc 116-1).

On 10/21/14, the District Court of South Carolina sentenced Smith to 262 mths on count 5 (922(g)) and a concurrent 262 mths on count 6 (924(c)). Without these statutory and guideline enhancements, Mr. Smith had [4] criminal history points and was a category 3, but because of the increased punishments, he was moved to category 6. Without the enhancements, Smith faced 97-121 mths without acceptance, but with acceptance, he would face 70-87 mths, which is almost a 400% decrease from the current sentence.

Mr. Smith filed a timely 2255 on 10/13/15 & argued that in light of Johnson v US 135 S.Ct 2551(2015) he is no longer a ACCA defendant. It was later determined that the Johnson ruling was limited to the violent felonies and the residual clause . However, the district judge did full review of the case and determined that the validity of the South Carolina convictions still qualifying as predicates was called into question . (See App'x D) because the South Carolina statue includes "purchasing" which is neither listed in the 851,ACCA or 4bl.2(b) definitions. (Doc 102 p.7)

In making this new review, the district court conceded that the instant offenses (922(g) and 924(c)) were either crimes of violence or controlled substance offenses. But it never stated which one he believed they qualified as.(i.e a crime of violence or a controlled substance). But since then, the Sentencing Commission and this Court has held that "possession of a firearm or a 924(c) is not a crime of violence".(See Sentencing Commission Emergency 2016 Amendment effective Aug.1, 2016 and also Boman v. US 196 Led 2d 6 (Oct.3, 2016) Therefore, by failing to make a legal determination as to which definition the court was relying on to state the instant offenses qualified constitutes legal error, because neither is a crime of violence nor a controlled substance, thus leaving Mr. Smith as innocent of the statutory and guideline enhancement(s).

However, in the App'x B and D, the government and the court has conceded, that Mr. Smith served only 3 days on all convictions.

Even after determining that the South Carolina statutes of conviction were overly broad and that the petitioner did not serve over a year on any of the priors, the Court still upheld the Career Offender, ACCA and 851 findings. The petitioner appealed (App'x C) and the Court upheld the District Courts findings. (US v Smith 18-7409 (4th Cir. 5/20/19)

The Supreme Court then ruled on the Rehaif decision, that showed that the government had been excluding the critical knowledge scienter elements for over 30 years and Vacated Rehaif's conviction and sentence. Like Rehaif, Mr. Smith filed to Vacate his plea and the Court and government again conceded that Smith did not serve over a year. However, the Court upheld the sentence again. (See App'x B), in which Mr. Smith again appealed. (US v Smith 20-7656 (4th Cir. 2020, Denied Sept 14, 2021, App'x A)

Mr. Smith now files a timely Writ of Certiorari requesting that his Sentences be Vacated and that the 922(g) be dismissed along with the ACCA, 851 and Career Offender enhancements and that he be Resentenced in light of the Congressional changes that renders all his priors as non-qualifying today under the First Step Act Sec 401.

REASONS FOR GRANTING THE PETITION

The First Step Act , Sec 401 requires the Resentencing of Smith because all parties have conceded twice that mr. Smith did not serve a 12 month period on any of the 6-10 priors relied on to impose the 851, ACCA or 4b1.1.

On December 18, 2018, Congress passed the First Step Act, which included a broad criminal reform aimed at curing past and present defects in sentence. On Dec. 21, 2018, President Trump signed into law the First Step Act.

The First Step Act Sec 401 changed the definition and qualifications for what can be deemed a serious drug offense for 851 and ACCA statutory enhancements. Specifically, the new language reads as Sec 401: Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies (App'x E)

(a) Controlled Substance Act Amendments-The Controlled Substances Act (21 USC 801) is amended-

(1) in section 102 (21 USC 802), by adding at the end the following

(57) The term "serious drug felony" means an offense described in section (924(e)(2) of the title 18 United States Code, for which-

(a) the offender served a term of imprisonment of more than 12 months

In addition, 924(e)(2) of 18 USC defines "serious drug felony" as an offense involving manufacturing, distributing, or possessing with intent to distribute a controlled substance with a maximum of ten years or more.

It is easy to see based upon the petitioner's records and the District Court and Governments 2 concessions, that if Mr. Smith were sentenced today he could not receive the 851 nor ACCA penalty and this Court should Vacate the Sentence(s), with instructions to remove the statutory enhancements. (See US v Richardson 2019 US Lexis 4169 (U.S June 17, 2019).

The First Step Act was passed to cure the sentencing disparities and to remove the harsh sentences. Because Congress has expressed its intent for the First Step Act changes to [apply] across the board, it would be easy for the Court to Resentence the petitioner seeing that Congress has also ordered the Sentencing Commission to make its sweeping changes to the guidelines as well. But as all parties are aware, the Sentencing Commission has not had a quorum to fulfill its congressional duty requirements, thus forcing many people to remain in prison, when they should have been given the chance for the reduced sentence. (See First Step Impementation Act deeming the Section 401 as retroactive, which was shows the Congressional bodies intent)

Therefore, in light of Section 401, Mr. Smith is no longer a ACCA, nor career offender and the 851 is also inapplicable, Smith should be Resentenced. It should also be noted that in August of 2016, the Sentencing Commission stated that the career offender enhancement should not be given to offenders whose priors are only drug offenses.

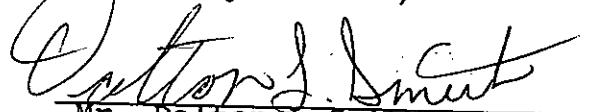
II. In Light of Greer/Gary and Rehaif the petitioner should be Resentenced and the 922(g) Convictions Vacated.

The Rehaif decision broke new ground and showed that for the last 30 plus years, the government had failed to include the critical scienter knowledge requirement. The Court held in the Greer/Gary consolidated ruling(s) that the petitioner must object prior to sentencing in order for the Rehaif ruling to be applied. (See Greer v US 210 LED 2d 121 (June 4, 2021) and Rehaif v US 204 LED 2d 594 (2019) In this case, Mr. Smith did object because he knew he had not served over a year. While at the time of the objection he was more focused on the statutory penalties, it was still a objection. Therefore, in light of Greer/Gary and Rehaif the Court should Grant the Writ and Remand with instructions to Vacate the 922(g) conviction and sentence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Mr. Dalton L. Smith
Fed No. 26316-171

Date: Dec. 7 , 2021